

Regular Meeting
Thursday, July 24, 2014

Springview Government Center
3130 E. Main Street
Springfield, Ohio 45505

Mr. Tim Greenwood, Chairperson of the Board of Zoning Appeals, calls the meeting to order at 2:00 p.m.

Present: Mr. Tim Greenwood, Mr. Jack Spurlock, Mr. Don Wallace, Mr. Rick Smith and Mr. Dave Minard

Absent: None

Also Present: Mr. Allan Neimayer, Clark County Community Development, and other interested persons.

Chairperson Greenwood asks if there are any comments regarding the June 26, 2014 minutes. Hearing none he asks for a motion.

BZA: 7-26-2014: Minutes ~ June 26, 2014

Motion by Mr. Spurlock, seconded by Mr. Smith, to approve the minutes as presented.

VOTE: Yes: Mr. Spurlock, Mr. Smith, Mr. Wallace, Mr. Greenwood, and Mr. Minard

No: None

Motion carries.

Chairperson Greenwood explains how the meeting will be held. Everyone will need to sign in that will be speaking. Staff will present the report and the Board will ask questions to Staff. The proponents will be able to speak followed by the opponents. Everyone will be sworn in before they speak. Rebuttal by the Applicant will follow, if desired.

Chairperson Greenwood asks the Board if anyone needs to abstain. There were none.

Chairperson Greenwood asks the Staff to present the first case.

Mr. Neimayer notes for the record that Mr. Minard will be a full-voting member for this meeting.

BZA-2014-11: Variance Case ~ Joshua & Emily Berner ~ Agent: Mark Scholl ~ Located at 5601 New Carlisle Pike ~ Bethel Township

Mr. Neimayer explains that the Applicants are requesting a Variance to allow a lotsplit attachment that will exceed the 4:1 depth-to-width ratio by 136 feet. The subject property is located at 5601 New Carlisle Pike in Bethel Township and zoned A-1 (Agricultural District). The Applicants are seeking a Variance to Chapter 2, Section A, Footnote 6.

CLARK COUNTY ZONING REGULATIONS

Chapter 2, Section A, Footnote 6:

No parcel of land in this district shall be used for residential purposes, which has an area of less than one (1) acre. All lots or parcels under five (5) acres, the depth of such lot or parcel shall not exceed an amount equal to four (4) times its width. [eff: 10-17-85] No new lot or lots shall be created by the platting of a subdivision in the A-1 District. [eff: 4-4-96]

Mr. Neimayer stated that the Applicants would like to buy 3.073 acres from the adjoining neighbor at 5559 New Carlisle Pike to be combined with their existing 1.55 acres for a combined total of 4.623 acres. The neighbor's parcel would be reduced from 8.72 acres to 5.647 acres. He also stated that he would follow up to make sure there was adequate separation from the pond to the property line for proper maintenance. Mr. Neimayer asks the Board if there are any questions for Staff at this time. There were none.

Chairperson Greenwood opens this portion of the public hearing at 2:02 pm.

Chairperson Greenwood asks if anyone would like to speak in favor of the Application.

Mark Scholl, whose address is 1533 Moorefield Road, stated that he was present to represent Scholl Land Surveying. He did the surveying for the Berners for this lot split attachment and stated to the Board that the Berners were present if they had any questions for them. He met with the Sothards (the abutting neighbors) and the Berners to decide where they wanted to put the property line. Along the current property line between both properties is a nice mature row of evergreen trees. That is why the line was extended 30 feet to the east to preserve this row of pine trees as a buffer. There is approximately 15 feet of clearance between the pond and where the property line would be. The reason for the acquisition by the Berners is that the Sothards would like to move out west. They have been neighbors for eleven years now and have agreed to sell this western portion of their land to the Berners to serve as a buffer to keep anyone from developing or building behind them and to protect their view.

Mr. Scholl asks if the Board had any questions for him. There were none.

Chairperson Greenwood asks if anyone else would like to speak in favor of the application. There were none.

Chairperson Greenwood asks if anyone would like to speak in opposition of the application. There were none.

Chairperson Greenwood closes the public portion of the hearing at 2:05 pm.

Chairperson Greenwood asks if there were any questions or comments from the Board.

Mr. Spurlock asks Mr. Neimayer if 15 feet clearance between the pond and the property line is sufficient to fulfill the requirement for maintenance.

Mr. Neimayer stated that he believes the regulations for a new pond require a 20 foot separation between the pond and the property line. The main thing is to make sure that there is room for proper maintenance. He stated that he would follow up with Mr. Scholl to make sure there is the

15 feet clearance and also consult with the Soil and Water Conservation District. The new property line could be shifted if necessary.

Chairperson Greenwood reopens the public portion of the hearing at 2:07 pm.

Mr. Scholl stated that the Sothards hand dug the pond and that it dries up during the dry periods of the summer. The land is pretty flat back there around the pond. The pond is rather stagnant with a little island in the middle of it and is only about three feet deep and not in great condition.

Mr. Neimayer stated that the code actually requires a 25 foot separation between the pond and the property line.

Chairperson Greenwood closes the public portion of the hearing at 2:08 pm.

Hearing no further questions, Chairperson Greenwood asks the Board for a motion.

BZA: 7-27-2014: BZA-2014-11~ Variance Case ~ Joshua & Emily Berner ~ Applicant: Mark Scholl ~ Located at 5601 New Carlisle Pike ~ Bethel Township

Motion by Mr. Wallace, seconded by Mr. Smith, to **Approve** the Variance with the condition that there is proper separation between the pond and the new property line.

VOTE: Yes: Mr. Wallace, Mr. Smith, Mr. Minard, and Mr. Spurlock

No: None

Motion carries.

BZA-2014-12: Conditional Use Case ~ Larry Berner, Owner; LJGA LLC, Applicant; Jim Peifer, Agent ~ Located at 525 Tremont City Road ~ Moorefield Township

Mr. Neimayer explains that the Applicant is requesting a Conditional Use for a sand and gravel mining operation. The subject property is located at 525 Tremont City Road, on the south side of the road between US 68 and Urbana Road in Moorefield Township. A survey of the subject property was completed by Louis Green on October 14, 1998 showing the property consists of 131.4545 total acres. The property comprises of two parcels - #220-03-00034-000-024 ((85.9633 acres) and #220-03-00033-000-018 (45.4912 acres). Excluding 1.5126 acres in State of Ohio right-of-way leaves 129.9419 net acres.

Mr. Neimayer also stated for the record that maps had been mailed to the Board members prior to the meeting so that they would have adequate time to review them due to nature of the case. Both parcels are zoned I-1 (Industrial District), where Resource and Mineral Extraction is a Conditionally Permitted Use requiring BZA approval. Included with the Application is a Support Letter from the Applicant's Agent, Jim Peifer, dated June 25, 2014, that further explains the proposed sand and gravel mining operation and responds to zoning requirements for this type of land use. In this letter, it states "*The area from which materials are proposed to be extracted is an area of approximately 110 acres*". However, on the Grading Plan it states "*The total acreage of the area to be mined is 96.5119 acres*". The Applicant needs to clarify this acreage discrepancy.

Surrounding Land Uses and Zoning Districts:

North	SF Residential, north side of Tremont City Rd.; Agriculture I-1
South	Agriculture I-1 (county); M-2 (Second Industrial District, German Twp.)
East	Industrial, Commercial development I-1
West	Agriculture M-2 (German Twp.)

Mr. Neimayer stated the subject property has been in agricultural use. There is an existing single-family home plus some accessory structures located at the northwest portion of the property. This home is a rental property and, as Staff understands, will continue as such. The Grading Plan shows proposed mounding to screen the house site from the mining operation.

Mr. Neimayer also stated that access to and from the proposed mining operation will be from a single driveway approximately 200 feet (correction from the original Staff Report that stated 400 feet) from the NE corner of the property's frontage on Tremont City Road – see Grading Plan. This access point still needs to be reviewed and approved by the County Engineer's Department.

Mr. Neimayer pointed out that, as shown on the location map, the subject property is partially located in the floodplain. According to the FIRM Map Panel #70, the north parcel is in the AE flood zone where FEMA has determined base flood elevations while the south parcel is in the A flood zone (no base flood elevations determined). A Floodplain Development Permit Application will have to be submitted for the proposed mining operation. Also, the "Limits of 100 Year Flood Zone" boundary shown on the Grading Plan does not correspond with the flood boundary as shown on the FIRM Map Panel #70. The Applicant will need to further review and discuss these floodplain issues with Tom Hale, County Floodplain Administrator.

Mr. Neimayer stated that the Board and the Applicant were presented with comment letters to the BZA from a neighboring property owner at 4949 Urbana Road Rear and from the following county agencies/departments: Clark Soil & Water Conservation District, County Utilities Department and the County Engineer's Department. Also included is a comment letter from the City of Springfield. A portion of the subject property is located in the City of Springfield's Wellhead Protection Area 5 Year Time Of Travel – see Grading Plan. In following the City's Wellhead and Well Field Protection Regulations, the City is opposed to approving the Applicant's Conditional Use Request unless an approval includes the following conditions:

1. None of the property will be used in any manner contrary to the Secondary Protection Area regulations currently or hereafter set forth by the City of Springfield.
2. Before beginning gravel mining operations, the owner will install 4 to 6 monitoring wells as directed by the City of Springfield that will allow the City to take periodic samples of groundwater in order to detect any movement of contaminants toward the well fields.

Zoning provisions for Resource and Mineral Extraction are provided in Chapter 7, Section 129. Those provisions are included in the Staff Report along with Staff's comments (in italics).

Chairperson Greenwood asks if there are any further questions for Staff.

Mr. Wallace stated that many years ago there was a document prepared concerning the flood plain and contamination potential related to the Mad River in Clark County and wondered if that document is available.

Mr. Neimayer stated there probably is a copy of that report in the department but he was not familiar with it.

Mr. Spurlock stated there are a couple easements on this property and asked if the easements are treated the same as property lines concerning setbacks for excavation.

Mr. Neimayer stated the required setbacks are from the property line.

Chairperson Greenwood opens this portion of the public hearing at 2:20 pm.

Mr. Jim Peifer, whose address is 20 S. Limestone Street, stated that he is the attorney for the owner and applicant in this case. Along with him today is Lou Green who is the principal member of L.J.G.A. LLC, the Applicant. Larry Berner is also in the audience and is the owner of the property in question. Mr. Green is a surveyor and also has an engineering background.

Mr. Peifer stated, in response to Mr. Neimayer's comment that the access point has not been approved up to this point by the County Engineer's Department, the access point would have to be approved before a permit would be issued to allow the operation to take place. In response to the flood plain issue, Mr. Green drew the flood plain boundary on his map from a copy of what he understood is the current flood zone map. They (Mr. Green and Mr. Peifer) have had conversations with Mr. Hale and have indicated to him that there is really no issue in regard to the boundary of the flood plain and do not feel that this has anything to do with the application. The map could always be amended to reflect the flood plain as is shown by the County.

Mr. Peifer also stated that, in regards to a letter that was submitted from the President of Wepuko Pahnke Engineering LP, Lisa Fitzharris, which is one of the commercial properties located along the east side of the subject property across the railroad tracks and runs parallel with Route 72/Urbana Road, he had a discussion with them and they are satisfied that the development will not impact them at all. The issue that was of concern to them centers around Navistar when they put in a huge piece of equipment 6 or 7 years ago in their manufacturing facility. Navistar had to establish a foundation for that equipment that required them to sink piers into the subsurface ground area and they needed to do dewatering. The dewatering had an adverse effect on the water supply for the surrounding commercial properties. There is no dewatering associated with the proposed mining operation.

Mr. Peifer stated the subject property is currently farm fields, farmed by Mr. Berner who is in the audience. He will summarize for the Board what Mr. Berner would say about farming in this area. Farming is very difficult due to the high water table.

Mr. Peifer also stated that since 2004 for about 10 years there has been a problem when the Ohio Department of Natural Resources (ODNR) changed the way they operated. They are the controlling authority for a reclamation plan. Their regulations trump the county's regulations. The ODNR will not review a plan for a reclamation site without the zoning being first approved. In the process of getting a permit, no permit will be issued to the Applicant without ODNR's approval of the reclamation plant. The Applicant is an engineer and he is in contact with three different large sand and gravel mining operators. They all have multiple permits within the State of Ohio. They are all major players in the sand and gravel business. As has become with case this type of zoning cases the end user will not allow their name to be disclosed until zoning has been approved. These are names that would be recognized and they have a lot of experience. They have been through this process with ODNR multiple times.

Mr. Peifer stated that the actual mining area in this development is 96 acres. To address Mr. Spurlock's question on the easements, all the easements are located within 75 feet of the boundary of the property and none of them are in the area that will be mined. Only sand and gravel will be mined. No blasting will be involved. The method of removal is through a drag line and a backhoe and is typical of the types of operations that one would see here locally. The plant equipment and scale are all portable and will most likely be located approximately 800 feet south of the North property line. There is a 6 foot mound that surrounds the property.

Mr. Peifer wanted to make a correction to his original letter to the Board dated June 25, 2014. The original letter stated that there were 4 test holes on the site and there are actually 14 test holes that have been placed on the property. In addition to that Mr. Green has well logs for 28 wells that surround the property. The plan is to remove approximately 12,500 tons of gravel a year, approximately 3.8 acres each year, which would equal about 3 to 5 trucks a day. The number of trucks involved would not have a significant impact on Tremont City Road. The cost to complete the full reclamation of the site is approximately \$625,000. As the mining is done each year the operation is also reclaiming. The mining would likely go on for 20 to 25 years.

Mr. Peifer stated that in respect to the location of said property it is remote with very little population and sits sort of like an island from the natural boundaries that exist: Tremont City Road to the north, US Route 68 to the west, and the Indiana and Ohio Railroad on the east. The property is ideal for the proposed use and the water issue is actually a benefit for this type of procedure making it a cleaner operation with less dust involved. The developer plans to construct a black top road so that any and all truck traffic will be on black top and not on gravel. Another key factor is that the railroad runs adjacent to the property on the east side. This most likely will be the location of the portable plant and also means that gravel could be loaded on railroad cars and not into trucks.

Mr. Peifer also stated that Mr. Green's interest is that contractors here locally have not been able to compete for business in Columbus and have been closed out of the market because of the inability to provide sand and gravel there. A developer in Columbus that had talked with Mr. Green had indicated that Columbus is currently getting sand and gravel trucked in from Germantown, Ohio. This is making the cost prohibitively expensive. This is an important economic tool for development and will produce a significant amount of revenue for Clark County.

Mr. Peifer referred to the letter that the Board received from the City of Springfield. The letter expressed concern about the Wellhead and Well field Protection area. The City has indicated that they would be ok with this development provided that the Applicant install 4 to 6 monitoring wells as directed by the City and also that the property will not be used in a way that is inconsistent with the Well Field Protection area. The Applicant has agreed to do both of those things and is more than willing to cooperate with them.

Mr. Peifer also referred to the letter from Chuck Bauer, Director of Clark County Utilities, expressing concern about water and referenced the Well Head Protection area. There is also a letter from Chuck Patterson, Health Commissioner. They have indicated that there is not as much concern as it appears on the surface.

Mr. Peifer stated that the other important thing to mention about the site is that there are natural boundaries that affect the drainage that relates to this property. The normal pattern for drainage in the area is NE to SW so essentially there is no water currently draining onto this site. The water problem that Mr. Berner has with the farming is the subsurface water being so close to the surface. The proposed use for the site is positive from an economic development standpoint,

from an income standpoint and from a farming standpoint due to the fact that the land is difficult to farm. While there is no perfect use for this property the proposed use is probably the highest and best use.

Mr. Peifer also stated that Mr. Green has had conversations with ODOT concerning this development and has been given preliminary approval to put a conveyor underneath the bridge of Moore's Run. Mr. Peifer stated that he would allow Mr. Green to explain this in more details. He offered to answer any questions the Board had at this time.

Mr. Wallace stated he read the letter from the City and senses that it is not quite as ok with them as Mr. Peifer had indicated and the City would prefer that this development not occur within their Well-Field Protection area. Maybe someone from the City could speak to that later. The other thing that stumped him was the comment that State trumps local government in regulation. After looking at Ohio Regulations and the portion that deals with mineral extraction there is a section that reads "*there is nothing about rules adopted in which shall be construed to prevent any county, township, or municipal corporation from enacting, adopting or enforcing zoning resolutions or ordinances however the Chief of the Division of Mineral Resources Management shall not enforce such daunting resolutions or ordinances*" Concern is that the tone of the second letter that Mr. Peifer sent to the Board seemed to say that the State will take care of enforcing regulations. The tone of the State Regulations is that the real burden rests with the county. The county is responsible for looking after zoning regulations and doing what is in the best public interest.

Mr. Peifer stated what he was saying is that where ODNR trumps the county is on the requirements that they have for reclamation. They are saying that if the county has something more restrictive that will have to be followed. His point is that ODNR will approve and grant the permit and that compliance will be with county regulations. The plan has to be submitted to ODNR for approval. If there are corrections or additions made to the plan they have to be made before any permit is issued. Once the permit is issued the primary responsibility for enforcement rests with the local authorities. ODNR gets reports every year from the gravel operators of what they have done and then ODNR will go to the sites to inspect to make sure that the reclamation that is required was done.

Mr. Wallace stated we could have a situation that the decision of a county opens a door to the permit process.

Mr. Peifer stated the (county) Board approval is the first step. The second step is for the operator to apply to ODNR for a permit with a reclamation plan. ODNR will review and critique it and tell the operator what changes need to be made. At that point they will then issue a permit.

Mr. Wallace stated that, in the letter from Mr. Peifer, the intention is for sand and gravel extraction. The Applicant stated that they are not applying for a concrete or asphalt operation and do not anticipate either to be a part of the operation at the subject location. That is not ruling out the possibility of a concrete or asphalt operation in the future.

Mr. Peifer stated they do not know if 20 years from now someone might come in and say that they wanted to have a concrete or asphalt operation. They would have to come before the Board for authority to do that.

Mr. Spurlock stated that, on the site plan, it states a majority of the material including topsoil will be shipped by rail.

Mr. Peifer stated that he would let Mr. Green discuss that.

Mr. Wallace stated that he would like return to the discussion of flood plain and the potential risk of contamination. In the supplemental letters that the Board received from the various county agencies there seems to be a theme of concern of the possibility of the aquifer contamination.

Mr. Louis A. Green, whose address is 5820 St Route 734, Jamestown, OH, stated that he wanted to speak about the permitting process. The State of Ohio will require a bond for every acre that is affected before the permit is actually issued. That bond has to be renewed each year along with the amount the operation would be reclaiming. The county would be protected due to the bonding process. He has done several of these permitting processes for different contractors. Generally, if a Conditional Use is approved, as we are asking for today, ODNR will look at issuing a mining permit and defining on a map the area affected and the bonding process. The information provided to ODNR is very parallel to the county's regulations. It is necessary to make sure that ODNR is satisfied before coming back to the county and ask for the actual zoning permit.

Mr. Green stated his history goes back about 12 years when he was contacted to do the survey for engineering on this site by GM that wanted to put a 13,000 car parking lot on this particular industrial piece of land. We designed it, did the drainage work, the earth work and did cost calculations and found that the cost per acre to bring material in to stabilize the soil on this property was going to run the development about \$32,000 an acre. They gave up on the idea. Mr. Berner made it his farm land. About a year and half ago, a gentleman walked into my office and was looking for aggregate. He was connected with a company that had aggregate and concrete facilities in Franklin County. They had to haul ten semi-truck loads of aggregate every night from Germantown, Ohio 85 miles one-way to Columbus just to meet the need of the concrete. There is a new lane going in on 275 around Columbus which is requiring a lot of aggregate and a lot of concrete. There is somewhat of a monopoly on aggregate in Franklin County. There are three large companies that have a special price that they pay for the existing aggregate that comes out. Contractors have come to him and said they cannot compete up there with the price structure. With the help of others, they were able to identify a tract of land next to the same railroad, the Indiana and Ohio Railroad, that runs along the east side of the subject property. The idea is to mine and process here and load on a train and ship twenty cars at a time with aggregate and also processed top soil to the Columbus market and sell it for less than half of what contractors are having to buy it for now. This would help the economy here in Clark County and would help the contractors in Columbus by providing another source of badly needed aggregate there.

Mr. Green also stated that, regarding the flood zone, there was an interest in expanding this operation. He presented a letter from ODOT to install a ground conveyor under Moore's run bridge as long as it is kept up above the flood level. Based on the ODOT drawings of the bridge, the flood level does not exceed the banks of the creek. We do not feel the flooding of Moore's Run would be a factor to the actuality that it would cause contamination.

Mr. Green stated there would be no run-off from the property. The drawing that he submitted has the flood zone line that was on the maps twelve years ago, it was not updated.

Mr. Wallace stated his interest was not so much the run-off of the property but the ability of any type of contamination from spills to access the water tables and the aquifers.

Mr. Green responded there should be no chemicals or anything other than perhaps fuel for the equipment that would even be subject to contamination. Oil floats on water and how much would percolate into the water table is questionable.

Mr. Wallace stated there is a place off of Baker Road called Valley Asphalt which appears to be an abandoned mine. It also abuts the same railroad that has been in this discussion. He asks Mr. Green if, in his review of this case, he has any sense why that operation has been abandoned.

Mr. Green stated he did not. Along US Route 68 there are several gravel pits that have been mined, are now abandoned and are very close to the well field.

Mr. Spurlock asks Mr. Green to expand on L.J.G.A. LLC Company and to explain who they are and what they are overall.

Mr. Green stated he is currently President of L.J.G. A. LLC and that they are a holding company for his professional life: Surveying and Land Planning. As a professional surveyor or engineer, it is not possible to incorporate.

Mr. Spurlock asks about the easements on the property, what kind of regulations are there as far as how close one can mine to them.

Mr. Green responded that there is a power line easement that runs along the railroad and is 75 feet wide. The mining would be 100 feet away from the property line. The only exception to that would be a loading operation which was kept south of where the bike path turns and goes to the east as to not affect the bike path. We would probably be working under or adjacent to those power lines. There is also a fiber-optics line that runs on the railroad property itself.

Mr. Spurlock stated on the site map it is stated that there is a blanket easement.

Mr. Green stated there is a blanket easement that runs from Kenton Creek to the south. The easements have not been defined. At times there will be a pipeline but they will not define the exact location and just place a blanket easement across the entire land and then it is up to the surveyors to locate it. It does not affect any of the acreage that is to be mined.

Mr. Spurlock asks how close to the easements can you mine.

Mr. Green stated by Regulations they have to stay 100 feet from the property line. The easement is only 75 feet so we will be at least 25 feet away from the easement if not further because we will also be using that area for the processing, loading and storage.

Chairperson Greenwood asks if there are any further questions for Mr. Green.

Mr. Peifer requested Mr. Berner address the Board concerning his farming operation.

Mr. Larry Berner, owner of the subject property, whose address is 4823 River Road, stated that there were several points he would like to make. His main farm is very close to the subject property. The property would be perfect because of the proximity if it were more suitable to farming. The water table has been a problem. They purchased the land in 1994 or 1995. The gentleman that they bought it from was a farmer. There were many days spent pulling tractors out of the mud and the water. Since then they have gotten tractors stuck several times. About

three years ago, their intention was to plant the whole area with corn. Due to the way the weather was and the rainfall in the spring, they were not able to plant at all until it was too late to plant the corn. They did not even plant soybeans, just planted a cover crop. The soil is excellent but the water table is too close to be able to farm. This year there are approximately 128 acres that are tillable and would estimate 25 to 30 of those acres have drowned out or were unable to be planted. The highest and best use for the land would be a gravel mining operation. There have been several different people at different times wanting to buy portions of the property for manufacturing. The northern part is the only portion that would be suitable for manufacturing without doing a lot of work to the property.

Mr. Berner also stated that there is a right-of-way deeded with this property. It comes out and crosses over the railroad and bike path and Moore's Run, then goes along what is now Woeber's Mustard property and actually abuts right where Moorefield Road extends down. This allows for another access to the subject property.

Mr. Berner also stated that, as far as contamination from surface water, the City has five lakes within the 1 year and 5 year time-of-travel zone. Currently one of them is filled with sludge.

Chairperson Greenwood asks if there are any more questions from the Board.

Mr. Peifer asks Bryan Heck to address the Board.

Mr. Bryan Heck, whose address is 76 E. High Street, stated that he is the Planning and Zoning Administrator for the City of Springfield. His role and why he was brought into this project is that information from the county and as it relates specifically to us is to our Well Field Protection area. He asks Mr. Neimayer to put the map up and refers to the southern parcel and that at least seventy five percent of that is located well within the 5 year time-of-travel area. The Ohio Revised Code and Chapters 929 of the City's Ordinances allow the City to provide areas with Well Head and Well Field Protection Regulations. A study was developed to find out what are the 1 year and the 5 year time-of-travel areas. Chris Moore, the City's Service Director, is in the audience and could answer more specific questions related to those time-of-travel areas. The City's main concern is the intention to mine sand and gravel that has a direct connection to the ground water and will then have a direct connection on the water that goes into the Well Field Protection Area and essentially the aquifer. This does pose a potential hazard to Well Field.

Mr. Heck stated an Applicant for a Conditional Use does have the burden placed on them to persuade the BZA that the proposed use will be constructed and operated in such a manner that it will not negatively affect two things: one being the surrounding properties; and two is the economic welfare of the community. The Well Field Protection falls within the economic welfare of the community. (City Ordinance) Chapter 929 has the regulations as it relates to the Well Field and specifically states things that are prohibited. Gravel pits are not one of those things that are prohibited, but it does cause some concern as a potential hazard. If the Conditional Use is approved, the City specifically requests the BZA to include the following two items as conditions to that approval: 1) that none of the property will be used in any manner contrary to the Secondary Protection Area regulations currently or hereafter set forth by the City of Springfield. The City would like to see that both parcels in question to be treated as if they are in the 5 year time-of-travel for the Well Field Protection area; and 2) before beginning gravel mining operations, the owner will install 4 to 6 monitoring wells as directed by the City of Springfield that will allow the City to take periodic samples of groundwater in order to detect any movement of contaminants toward the Well Fields.

Mr. Heck stated he would be happy to answer any questions at this time.

Mr. Wallace asked Mr. Heck if the City would prefer that this property not be developed as a gravel pit.

Mr. Heck stated the City has potential concerns about what could happen to the ground water. There is nothing in the regulations that prohibit the requested land use. However, we believe that the two requested conditions of approval could help if a gravel pit Conditional Use is approved. There are a lot of unknowns, so the potential concerns have to be weighed and the Applicant is responsible for providing that burden of proof that it will not negatively affect the economic welfare of the surrounding properties.

Mr. Spurlock asks Mr. Heck to explain the Secondary Protection Area regulations.

Mr. Heck stated the Secondary Protection Area essentially provides prohibited uses, specifically anything related to landfills. More specific for the Secondary Protection Area, beyond the uses of the property, is what is done on the property and how things are stored on the property. The amounts of chemicals and potential hazardous materials that are stored on the property are regulated and it is required that these be reported annually.

Mr. Spurlock asks about contamination from fuel spills on the site.

Mr. Heck stated the Secondary Protection Area regulates the quantity of those materials stored on the property to minimize the impact if there was a spill.

Mr. Spurlock asked if the information was available as far as the amount of fuel etc. that would be allowed on the property.

Mr. Heck stated he could provide the Board a copy of those regulations.

Mr. Spurlock asked if it is required to report a spill that would occur on site.

Mr. Heck responded anytime there is a spill within the Well Field Protection Area it is to be reported. That is one reason the City would like the entire property to be treated as if it is in the 5 year time-of-travel so that any spill would be reported and also any type of chemicals stored would have to be reported.

Mr. Spurlock stated that, with the nature of equipment that will be used, there could be a small spill or large spill. Is there any basis on what size would require reporting?

Mr. Heck stated he could not answer that specifically.

Chairperson Greenwood asked the Board if there were any further questions.

Mr. Peifer stated they do not envision there to be a lot of heavy equipment on the site. Therefore, there will not be a large quantity of oil etc. being stored.

Mr. Spurlock stated that Mr. Peifer has made a couple different statements concerning heavy equipment that seem to be conflicting. He asks for clarification.

Mr. Green stated that, based on the test holes that were dug on the site, the gravel depth ranges from about 30 feet down to about 55 feet. A large amount of this material will be mined after the top soil is removed. The top soil is rich and black and very marketable. Most of the gravel will be excavated by a large backhoe and a drag line will be used as we will go deeper. Ground conveyors will then transport the materials to the processing plant.

Mr. Spurlock asks Mr. Green if there would be a separate processing plant for the top soil.

Mr. Green responded there will have to be a separate processing facility for the top soil to shred and dry it. There would also be earthmovers (scrapers and bulldozers) used on the site.

Mr. Spurlock stated it sounds like there would be more equipment on the site than was originally stated on the application. He also stated that, on the site map, it shows a bike path between the railroad and the property on the north side. Would the load out go across the bike path?

Mr. Green stated the bike path bends and we are hoping to keep everything south of that point so we would not be affecting the bike path.

Mr. Spurlock asks Mr. Green what the average water table elevation is on the said property.

Mr. Green responds the water table is about a foot underground and, in areas, just underneath the surface.

Mr. Spurlock asks what the elevation is.

Mr. Green stated it is hard to say without a topo map. All the mounding will be in place prior to the mining of the property.

Mr. Peifer commented the Applicant is more than willing to comply with the City's requests.

Mr. Smith asks Mr. Peifer if any fuel stored on the property will be monitored by the EPA.

Mr. Peifer stated that is correct along with the Corp of Engineers and ODNR and also permits would be required.

Chairperson Greenwood asks if anyone else would like to speak in favor of the case.

Mr. Chris Moore, whose address is 2100 Lagonda Avenue, stated that he is not speaking in favor of the case but just wanted to make some clarifications and answer some questions that have been presented. No more than 55 gallons of chemicals can be stored on the property at any one time. Secondly, you cannot store more than 110 gallons of other chemicals such as cleaning agents on site. There also can be no underground fuel storage. These three things are part of the City's ordinance concerning the Secondary Protection Area.

Mr. Spurlock asks what the limit on fuel storage was.

Mr. Moore stated he did not see there was a limit but did not look through thoroughly line by line.

Mr. Peifer stated whatever the requirements are as far as storage the Applicant would comply.

Chairperson Greenwood asks if anyone else would like to speak in favor of the case. There were none.

Chairperson Greenwood asks if anyone would like to speak in opposition of the case.

Mr. Tom Lagos, whose address is 750 Shrine Road, stated that he is the Attorney representing Stephen and Judy Enlow. He asks Mr. Neimayer to show the map with the potential entry point for the operation. The Conditional Use process is a very specific process. Before the Board can consider voting aye or nay on a Conditional Use request, certain requirements are specifically required. Mr. Neimayer has done an exceedingly good job. The Board needs to look no further than on page three of Mr. Neimayer's report. He specifically says in item # 6: an application for such operation shall set forth the following information in narrative text form. The most important thing it says is that the name of the corporation conducting the actual removal operation must be stated. The most important person is not present, the representative of the gravel operation, the person that could answer some of the questions that the Board has had. Mr. Green is a good surveyor but he is a surveyor. He does not have a mining permit. The person the Board needs to talk to in order to make an actual decision is the operator to ask him specific questions about equipment etc. That person is not present. The Conditional Use application says "shall". The word shall is mandatory. If the name of the operator is not given then in my opinion the Board lacks jurisdiction to vote. The Board should definitely vote no but at least table it until an application is filled out with the information that should be provided. If the operator is here the questions can get answered.

Mr. Lagos stated his clients were present. They are the one resident that will be impacted that is not owned by Mr. Peifers' clients. They will be impacted and they own a very nice home. The access point still has not been determined but it is obviously going to affect them. What typically happens is the attorney for the Applicant calls and says can we work out something. The operator needs to be present to answer specific questions. The regulations say "shall" and if the operator is not named then the Board lacks jurisdiction to even make a decision. His clients are present and the Board may ask them questions. Obviously a sand and gravel mining company will change the quality of their life. There will be more noise, dust and pollution than the farm operation that has been going on. Their property values will be lowered and they believe that there is a chance the ground water will be contaminated. Also, there may be as many as 20 railroad cars sitting there waiting to be loaded. Who knows what could be in those tank cars that could seep into the ground when they are filled with gravel. Both clients are cancer survivors and feel that this would impact their health. It may change ground water level and ruin their environment. They have made many improvements on their home. There are no specific accommodations being made to protect them. The most important element is that the Applicant has not identified who the operator is.

Mr. Lagos stated he would be happy to answer any questions the Board might have at this time.

Mr. Wallace stated that Mr. Lagos stated exactly what the zoning regulations require.

Mr. Lagos stated that once the Board votes they lose any local control. He urged the Board to vote no. He also suggested that the Applicant file a new application and bring the operator.

Chairperson Greenwood asks if anyone else would like to speak in opposition.

Ms. Julie McLean, whose address is 5499 Tremont Lane, stated that she works for Turn-All Machines which is just to the east of the subject property. The owner of Turn-All Machines wanted to be here today, but she is here on their behalf. Their concern is the same as Mr. Lagos' clients. Turn-All Machines tries to keep an immaculate place and having a gravel pit next door does nothing positive for property value not to mention pollution and the increase in traffic. The owner has several lots for sale and is concerned that the gravel operation would hurt the sale of those properties.

Chairperson Greenwood asks if anyone else would like to speak.

Mr. Steve Enlow and Mrs. Judy Enlow, whose address is 518 Tremont City Road, stated they have lived in their home for 25 years and spent that long remodeling it. Mrs. Enlow stated she has several concerns about the water. She does not feel it is worth taking a chance of polluting the ground water. A year or so ago there was a salt company in the area. That company had to move because of several concerns about the water. The Health Department was out every two to three months testing their well water. Mr. Enlow stated this is their home. They have nowhere else to go and plan to stay. Twenty-five years ago this area was all agriculture now things have changed but it is still their home.

Chairperson Greenwood asks if anyone else would like to speak. There were none.

Chairperson Greenwood asks if the Applicant would like a chance for rebuttal.

Mr. Peifer stated the Applicant is in contact with the operators and they will not at this point reveal their names. Mr. Peifer also stated the ground water level will not change due to the gravel operation.

Mr. Peifer stated in respect to the Enlows and Ms. McLean this property is all zoned industrial and is not zoned residential. While the Enlows may have an issue with a gravel mining operation they would probably have an issue with a lot of the uses that would be permitted. There are many uses that could be done without having to appear before the Board.

With regard to Ms. McLean, Ms. Powers' properties are also located in an industrial district and located on the opposite side of the railroad. They are not likely to be effected at all from the mining operation. The lots for sale are all zoned industrial and not sure that the mining operation would have an effect on the marketing of those lots.

Mr. Peifer also stated that one thing that could possibly be done with respect to the Enlows' issues is there is an area in the subject property that consists of about 20 acres just south of Tremont City Road that Mr. Berner has the right to take out of the land that would be acquired for the mining operation. This would result in the mining operations moving approximately 20 acres south. That might be of some help to the Enlows.

Chairperson Greenwood asks if there were any further questions. There were none.

BZA: 7-28-2014: Motion to go into Executive Session

Motion by Mr. Wallace, seconded by Mr. Spurlock, to go into Executive Session.

VOTE: Yes: Mr. Wallace, Mr. Spurlock, Mr. Smith and Mr. Minard.

No: None

Chairperson Greenwood noted the Time Out for Executive Session at 3:51 pm.

Chairperson Greenwood noted the Time In from Executive Session at 4:22 pm.

Chairperson Greenwood stated that, at this time at the request of the two attorneys, he would entertain a motion to Table Case every night BZA-2014-12.

BZA: 7-29-2014: Motion to Table Case BZA-2014-12 until August 28, 2014

Motion by Mr. Wallace, seconded by Mr. Smith, to **Table** Case #BZA-2014-12 until August 28, 2014.

VOTE: Yes: Mr. Wallace, Mr. Smith, Mr. Minard and Mr. Spurlock.

No: None.

Motion carries.

STAFF COMMENTS

Mr. Neimayer stated the next meeting will be August 28, 2014. There are two new cases filed for that meeting.

ADJOURNMENT

Chairperson Greenwood asks for a motion for adjournment.

BZA: 07-30-2014 ~ Adjournment

Motion by Mr. Wallace, seconded by Mr. Spurlock, to adjourn the meeting.

VOTE: Motion carries unanimously.

The meeting was adjourned at 4:25 pm.

Tim Greenwood, Chairperson